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8 U.S. TelePacific Corp. dba TPx Communications

9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 In Re:

12 **PG&E CORPORATION,**

13 **-and-**

14 **PACIFIC GAS AND ELECTRIC**
15 **COMPANY,**

16 **Debtors.**

- 17 ☐ Affects PG&E Corporation
18 ☐ Affects Pacific Gas and Electric Company
19 ☒ Affects both Debtors

Case No. 19-30088-DM

Chapter 11

(Lead Case) (Jointly Administered)

**RESPONSE OF U.S. TELEPACIFIC
CORP. DBA TPX COMMUNICATIONS
TO DEBTOR'S FIRST OMNIBUS
REPORT AND OBJECTION TO CLAIMS
ASSERTED PURSUANT TO 11 U.S.C.
§503(B)(9)**

Date: August 14, 2019

Time: 9:30 a.m.

Place: 450 Golden Gate Ave.,
Crtrm 17, 16th Flr.
San Francisco, CA

Honorable Hon. Dennis Montali

20
21 **COMES NOW** U.S. TelePacific Corp. dba TPx Communications, Creditor herein,
22 responding to the Debtor's First Omnibus Report and Objection to Claims Asserted Pursuant to 11
23 U.S.C. §503(B)(9) ("Claim Objection"), and respectfully represents as follows:

24 **I. INTRODUCTION**

25
26 U.S. TelePacific Corp. has filed a claim in the amount of \$36,773.88 for charges accrued
27 during 20 days prior to the within bankruptcy, asserting that the charges represent "goods" within the
28 meaning of 11 U.S.C. §503(b)(9). The claim is for data and voice provided to and consumed by the

1 Debtors (See Invoices attached to Proof of Claim Nos. 2509 and 2528).

2 Debtor's Claim Objection is fairly terse, stating that "claim amount asserted includes (i)
3 amounts for services and other non-goods; and (ii) amounts for freight and/or taxes." (Debtor's First
4 Omnibus Report and Objection to Claims, Ex. A, page 33 of 36).

5 The text of the Claim Objection states that "Claim is invalid and should be disallowed to the
6 extent it includes services or other nontangible items rather than goods." (Debtor's First Omnibus
7 Report and Objection to Claims, 6:21-22).

8 As will be hereinafter explained, the product provided is the same as electricity, enhanced by
9 the addition of voice and data, which courts hold to constitute "goods". In re Escalera Resources
10 Co., 563 B.R. 336 (Bankr. D. Colo. 2017), citing Puget Sound Energy v. Pac. Gas & Elec. Co. (In re
11 Pac. Gas. & Elec. Co.) 271 B.R. 626, 639-640 (N.D. Cal. 2002). "Telecommunications," sold by
12 U.S. TelePacific Corp. to PG&E, refers to the exchange of information "by electronic and electrical
13 means over a significant distance." A complete telecommunication arrangement is made up of two
14 or more stations equipped with transmitter and receiver devices. In telecommunications, data is
15 transmitted in the form of electrical signals known as carrier waves, which are modulated into
16 analogue or digital signals for transmitting information. (Forsyth Declaration, ¶4, 5 and 6).

17 In essence, U.S. TelePacific is providing the electrical signals to PG&E which enable the
18 transmission of its data. As such, the contract is one for the sale of "goods" within the meaning of
19 11 U.S.C. §503(b)(9).

20 I. ARGUMENT

21 In *Puget Sound Energy v. Pac. Gas & Elec. Co.*, *Supra*, the District court set forth several
22 reasons why electricity constituted a "good", many of which apply to the data and voice sold by U.S.
23 TelePacific Corp. to the Debtors. Quoting the Texas Supreme Court, electricity is a commodity,
24 which, like other goods, can be manufactured, transported and sold... while the distribution of
25 electricity through a system of towers, poles and wires may well be considered a service, the
26 electricity itself has a consumable product." *Supra* at 639. *Grant v. Southwestern Electric Power*
27 *Co.*, 20 S.W.3d 764, 771 (Tex. App. 2000). The product is undoubtedly "movable," (a prerequisite
28 to a product being a "good" under the U.C.C., "if for no other reason than the monthly reminder

1 from the electric company of how much current has passed through the meter.”) *Supra*. Moreover,
2 logic would indicate that whatever can be measured in order to establish the price to be paid would
3 be indicative of fulfilling both the existing and movable requirements of goods.” *Supra*.

4 Simply put, data and voice are things movable at the time of identification to the contract for
5 sale. That is clearly demonstrated by the fact that the agreement calls for either the shipment of
6 specific quantities of data or the sale of voice services on a metered basis. Quoting the bankruptcy
7 court, “These cases seem to hold that transformation from a service to a product occurs when raw
8 power crosses from the utility’s distribution system to the customer’s meter. And so I am at a loss to
9 know why the same rules wouldn’t apply when a customer happens to be a utility and even though
10 the power is much greater, it certainly contemplates some sort of a meter or some sort of a
11 measuring device. *Supra* at 638.

12 Similarly, the sale of data and voice to Debtors “contemplate some sort of a meter or some
13 sort of measuring device”. (Forsyth Declaration, ¶6).

14 II. CONCLUSION

15 The claim of U.S. TelePacific Corp. constitutes the sale of “goods” within the meaning of
16 Article 2 of the Uniform Commercial Code, Section 2105, and Bankruptcy Code Section 502(b)(9)
17 11 U.S.C. Section 502(b)(9). U.S. TelePacific Corp. respectfully request that the claim be allowed
18 as filed and that the Debtors’ objection be overruled.

19 DATED: July 31, 2019

MACDONALD FERNANDEZ LLP

21 By: /s/ Iain A. Macdonald.
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24 U.S. TelePacific Corp.
25 dba TPx Communications
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